Paid

15-105

Thos Davis —

Submitted —

Mr Davis to file brief by Friday —

Affirmed

Judge Story

Dowde

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~472.~~ ~~205~~ 53

GEORGE FRED. McLELLAN AND ROBERT P. DODGE, APPELLANTS,

vs.

RILEY A. SHINN, THOMAS P. MORGAN, GEORGE RHINEHART, AND ERWIN G. COMSTOCK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 9, 1871.

Dec. 2, 1872

SUPREME COURT OF THE UNITED STATES.

No. 472.

GEORGE FRED. McLELLAN AND ROBERT P. DODGE, APPELLANTS,

vs.

RILEY A. SHINN, THOMAS P. MORGAN, GEORGE RHINEHART, AND ERWIN G. COMSTOCK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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2 *Bill of complaint.—Filed May* 25, 1868.

In the supreme court of the District of Columbia.

GEORGE FRED. MCLELLAN AND ROBERT P. Dodge
vs.
RILEY A. SHINN, THOMAS P. MORGAN, GEORGE Rhinehart, and Erwin G. Comstock.
} 1290. Equity docket 9.

To the hon. the judges of the supreme court of the District of Columbia:

Your orators, Robert P. Dodge and George Frederic McLellan, bring this bill against Riley A. Shinn, Thomas P. Morgan, George Rhinehart, and Erwin G. Comstock, and thereupon your orators complain and say:

That, on or about the day of September, A. D. 1865, the
3 said defendants Thomas P. Morgan and Erwin G. Comstock, together with one James R. Kelly, and one Joseph L. Savage, purchased from the Quartermaster's Department of the United States, and became joint owners in equal shares of, a propeller steamship called the "City of Richmond," of about the tonnage of 377.53 tons, Government measurement, and the same was reënrolled by the name of the "Fairfax," at the port of Georgetown, in the District of Columbia, on or about the 10th day of October, 1865, in their names as joint owners.

That, on the 2d day of October, 1865, the said defendant Riley A. Shinn purchased from the said James R. Kelly all his, the said James R. Kelly's, interest, being one-fourth part in the said steamship, and received from the said Kelly a bill of sale thereof, but did not cause the said bill of sale to be recorded till the 11th day of October, 1865,
4 when he caused the said bill of sale to be recorded pursuant to the statute of the United States in that behalf, at the custom-house, in Georgetown, D. C., as by copy of said bill of sale so recorded, hereto annexed, marked Ex. A, will more fully appear.

And thereafter, on the 23d day of October, 1865, a certificate of enrollment was issued by the collector of the port aforesaid to the said T. P. Morgan, Jos. L. Savage, Erwin G. Comstock, and Riley A. Shinn, a' joint owners of one-fourth part each as by copy of said enrollment hereto annexed, marked Ex. B, will more fully appear.

That, by virtue of said conveyance of the 2d day of October, in the year 1865, the said Thomas P. Morgan, Joseph L. Savage, Erwin G. Comstock, and Riley A. Shinn became joint owners of the said steamship Fairfax, and were possessed of equal shares of one-fourth of the said vessel, and continued to be so possessed until the said vessel
5 was accidentally destroyed by fire on the night of the 3d of January, A. D. 1866.

That the shares of the said Morgan and Comstock were held for the joint benefit of themselves and one George Rhinehart, in equal portions; and the said Rhinehart, Morgan, and Comstock were copartners in the shipping business, and composed the firm of Morgan, Rhinehart & Co.

That the said Morgan, Rhinehart & Co. were the agents for the vessel, or what was known as the "ship's husbands," and were charged by the other owners with the duty of managing the said vessel and attending to the repairs, and generally of providing whatever might be necessary for her use, as well as of receiving the freights and transacting her general business.

That the said vessel, when purchased, required extensive repairs to fit her for the trade in which she was intended to be engaged, to wit, as one of the line of the Atlantic Steamship Company; and the said
6 Morgan, Rhinehart & Co., acting by the authority and at the request of the other joint owners, and after the 2d day of October, 1865, caused such repairs to be made, and paid the costs to the amount of $13,206 34, by reason whereof each of the other joint owners, to wit, Jos. L. Savage and the said defendant, Riley A. Shinn, became liable to pay to them one-fourth part of the said sum, to wit, the sum of $3,301.58.

That the said steamer was as hereinbefore stated, destroyed by fire without having earned anything which came into the hands of Morgan, Rhinehart & Co., towards defraying the expenses aforesaid; that she was insured in the Columbian Insurance Co. of New York, but that company failed, and neither the said Morgan, Rhinehart & Co., nor any other of the joint owners, so far as your orators are informed, were able to recover any money on account of the said insurance, notwithstanding they used all due diligence to that end.

That, on the 6th day of July, A. D. 1866, the said Erwin G. Comstock assigned, among other things, all his interest in the said debt
7 due for advances on account of the said vessel to his copartners, the said Morgan and Rhinehart, as will appear by copy of the said assignment hereto annexed, marked Exhibit C. And, on the 13th day of February, A. D. 1867, the said Morgan and Rhinehart assigned, among other things, all their right and interest in the said debt to your orators, as will appear by a copy of the assignment hereto annexed, marked Exh. D.

And your orators had well hoped that the said defendant Riley A. Shinn would have promptly paid to your orators his just share of the costs and expenses so as aforesaid incurred and paid for the joint benefit of himself and the other joint owners of the said steamer, but now so it is, may it please your honors, that the said defendant Riley A. Shinn, hath hitherto refused and still refuses so to do, all of which is contrary to equity and good conscience.

To the end, therefore, that the said defendants may answer the matters and things hereinbefore charged, and that an account may
8 be taken of the charges and expenses paid by your orators' said assignors, and that the said Riley A. Shinn may be compelled by decree of this honorable court to pay to your orators his just share thereof, and that your orators may have such other and further relief in the premises as to your honors may seem just:

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States, to be directed to the said Riley A. Shinn, Thomas P. Morgan, George Rhinehart, and Erwin G. Comstock, commanding them and each of them at a certain day and under a certain pain to be therein specified, personally to appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet. And your orators shall ever pray.

JNO. D. McPHERSON,
Sol'r for Compl'ts.

9 *Exhibit A. to bill of complaint.*

Know all men by these presents that I, James R. Kelley, of the city of Philadelphia, State of Pennsylvania, for and in consideration of the

sum of eighteen hundred (1,800) dollars to me in hand, well and truly paid, at or before the ensealing and delivery of these presents, by Riley A. Shinn, of Georgetown, of the District of Columbia, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain, and sell unto the said Riley A. Shinn and his heirs, executors, and administrators, all my interest in the hull or body of the good propeller steamship "Fairfax," of said Georgetown and District, now lying in the port of New York, not now enrolled, but whose papers are to be renewed in the custom-house of the port of Georgetown aforesaid, which said steamship was formerly the United States steamship "City of Richmond," with all and sin-
10 gular, her boats, rigging, tackel, engines, and all appurtenances to the same belonging or in any manner appertaining, my said interest in said steamship and all her belongings, being a one-fourth interest therein and thereto, the tonnage of which said steamship is about four hundred and forty-four (444) tons, and whose general description is as follows: She is schooner rigged; has a cut-water and billet-head; has double decks and no quarter galleries:

To have and to hold the said hereby granted and bargained interest in the said steamship "Fairfax," and all her appurtenances and belongings of all kinds whatsoever to the said Riley A. Shinn, and his heirs, executors, administrators, or assigns to his and their only proper use, benefit, and behoof forever.

And I, the said James R. Kelly, do hereby avouch myself to be the true and lawful owner of the said interest in the steamship "Fairfax," and her appurtenances and belongings, and to have in me full power and authority to sell and dispose of my said interest in manner
11 aforesaid; and furthermore I, the said James R. Kelly, do hereby covenant and agree to warrant and defend the said interest in said steamship "Fairfax," her appurtenances and belongings aforesaid against the lawful claims and demands of all persons whatsoever unto him, the said Riley A. Shinn, and his heirs, executors, administrators, and assigns.

In witness whereof I, the said James R. Kelly, have hereunto set my hand and affixed my seal this second day of October, A. D. 1865.

JAMES R. KELLY. [SEAL.]

Signed, sealed, and delivered in the presence of—(the words "my interest in" being interlined, line 14 page, 1.)

JENKIN THOMAS.
CHARLES M. MATHEWS.

COUNTY OF WASHINGTON, *District of Columbia, ss:*

I, Jenkin Thomas, a notary public in and for said county and District, dy hereby certify that James R. Kelly, party to the foregoing and annexed bill of sale, dated on the second day of October, 1865, per-
12 sonally appeared before me in my county aforesaid, and being personally well known to me as the person, who executed the said deed, acknowledged the same to be his act and deed.

As witness my hand and seal notarial this second day of October, in the year 1865.

[SEAL.] JENKIN THOMAS,
Notary Public.

Received for record and recorded October 11th, 1865.

CUSTOM-HOUSE, *Georgetown, D. C., Nov.* 24, 1866.

I hereby certify that the foregoing is a true copy of a bill of sale from James R. Kelly to Riley A. Shinn, as recorded in the records of this office.

Witness my hand and official seal the day and year first above-written.

[SEAL.] J. L. PARKHURST,
Dep. Collector.

13 *Exhibit "B" to bill of complaint.*

Enrollment.

Enrollment in conformity with an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," appproved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

No. 57.

Thomas P. Morgan, of Washington, D. C., having taken or subscribed the oath required by the said act, and having sworn that he, Thomas P. Morgan, ¼; Joseph L. Savage, ¼; E. G. Comstock, ¼; and Riley Shinn, ¼: are citizens of the United States, sole owners of the ship or vessel called the Fairfax, of Georgetown, D. C., whereof William H. Winters
14 is at present master, and as he hath sworn, is a citizen of the United States, and that the said ship or vessel was purchased by the present owners of the U. S. Quartermaster Dept., as per enrollment No. 51, issued at this port Oct. 10, 1865, now surrendered. Property changed.

And said enrollment having certified that the said ship or vessel has two decks and two masts, and that her length is 147 & $\frac{5}{10}$ feet, her breadth 23 & $\frac{8}{10}$ feet, her depth 9 & $\frac{6}{10}$ feet, her height feet, and that she measures three hundred and seventy-seven tons and 53 hundredths, viz:

	Tonnage	$\frac{1}{100}$
Capacity under tonnage deck	186	31
Capacity between decks, above tonnage deck	191	22
Capacity of enclosures on the upper deck		
Total tonnage	377	53

And that she is a steamer, has and billet-head. And the said Thomas P. Morgan having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said steamer has been duly enrolled at the port of Georgetown, D. C.

15 Given under my hand and seal, at the port of Georgetown, this 23d day of October, in the year one thousand eight hundred and sixty-six.

J. L. PARKER,
Deputy Collector.

Exhibit "C" to bill of complaint.

This indenture, made this sixth day of July, in the year eighteen hundred and sixty-six, by and between E. G. Comstock, of the city and State of New York, of the first part, and Thomas P. Morgan and George Rhinehart, trading under the name and style of Morgan & Rhinehart, of the city and county of Washington, in the District of Columbia of the second part, witnesseth:

That the said E. G. Comstock, for and in consideration of the stipulations hereinafter mentioned, and for and in consideration of the sum of fourteen thousand dollars, current money, to him in hand paid
16 by the said Thomas P. Morgan and George Rhinehart before the sealing and delivery of these presents, the receipt of which sum of money is hereby acknowledged, hath given, granted, bargained, and sold, assigned, transferred, set over, and delivered, and by these presents doth give, grant, bargain, and sell, assign, transfer, set over, and deliver unto the said Thomas P. Morgan and the said George Rhinehart, and to their and each of their heirs, executors, administrators, and assigns forever, all his, the said E. G. Comstock's right, title, claim, and interest in and to all the property of every description and nature belonging to the said firm of Morgan, & Rhinehart & Co., consisting of steamships and their appendages, fixtures, and furniture of every description, as well as anchors, chains, cables, and including all books, accounts, papers, evidences of debt, bills, notes, matured or not:

To have and to hold the same, and every part thereof, unto the said Thomas P. Morgan and the said George Rhinehart, their and each of their heirs, executors, administrators, and assigns, forever, free
17 and clear of any and every claim of the said E. G. Comstock in and to the same.

And the said Thomas P. Morgan and the said George Rhinehart do hereby promise and agree to assume, liquidate, and pay all the outstanding debts and obligations of the said firm of Morgan, Rhinehart & Co., together with debts and obligations of said firm which may hereafter become due by said firm, and hereby releasing said E. G. Comstock, and his executors and administrators, fully and completely from all liability for the payment of the same or any part thereof; also, to pay and take up all the obligations of the said firm created, and notes given for the purchase of the steamers "Beauford" and Tappahannock, due Lester D. Fuller, of Philadelphia, and one-eighth of the steamer "John Gibson," one-eighth of the steamer "E. C. Knight," one-half of the steamer "Triton," and one-quarter of the steamer "Fairfax," as per bill of sale bearing even date with these presents.

18 In testimony whereof the said parties hereto have hereunto set their hands and seals this sixth day of July, 1866.

E. G. COMSTOCK. [SEAL.]
THO'S P. MORGAN. [SEAL.]
GEO. RHINEHART. [SEAL.]

Signed, sealed, and delivered in presence of—
N. CALLAN.
N. CALLAN, JR.

DISTRICT OF COLUMBIA,
County of Washington:

I, Nicholas Callan, a notary public in and for the county and district aforesaid, do hereby certify that E. G. Comstock, Thomas P. Morgan,

and George Rhinehart, parties to a certain deed bearing date the 6th day of July, A. D. 1866, and hereunto annexed, personally appeared before me in my county aforesaid, the said parties being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their respective acts and deeds.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 6th day of July, A. D. 1866.

N. CALLAN,
Notary Public.

19 *Exhibit "D" to bill of complaint.*

This indenture, made this fifteenth day of February, in the year eighteen hundred and sixty-seven, by and between Thomas P. Morgan and Caroline W. Morgan, his wife, and George Rhinehart & Sophia Rhinehart, his wife, parties of the first part; Thomas P. Morgan & Caroline W. Morgan, his wife, parties of the second part; and George F. McLellan and Robert P. Dodge, parties of the third part; all of Washington County, and District of Columbia, witnesseth:

Whereas the said Thomas P. Morgan & George Rhinehart, trading under the name, style, and firm of "Morgan & Rhinehart," are justly indebted to sundry individuals, companies, copartnerships, banks, and banking associations, in divers sums of money, which said indebtedness has accrued during the course of their business; and they are the owners of certain real estate, personal estate, bonds, bills, stocks, rights, interests, claims, credits, and demands; and the said Thomas P. Morgan
20 is the owner of certain other real estate, and being unable to meet their engagements, they are desirous of having all their assets and property of every description, joint and several, made available as early as practicable, and applied to the satisfaction of all and each of their debts and liabilities in the manner hereinafter provided for, which, upon mature consideration, they have deemed most just and equitable:

Now, this indebtedness witnesseth, that the said parties of the first part, for and in consideration of the premises and of the sum of five dollars, ($5,) to them in hand paid by the said parties of the third part at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have, and each of them hath granted, bargained, and sold, assigned, transferred, set over, released, conveyed, and confirmed, and do, and each of them doth hereby grant, bargain, and sell, assign, transfer, set over, release, convey, and confirm unto the said parties of the third part, their heirs and assigns, the sur-
21 vivor of them, his heirs and assigns, all those certain pieces or parcels of land, situate and being in the city of Washington, and District aforesaid, and known as described on the ground-plot or plan thereof as parts of lot numbered two, (2,) in square numbered nine, (9,) beginning, for the first of said parts, at a point on said lot sixty-four (64) feet due east from the west boundary line of said lot, and twenty-eight and a half (28½) feet due south from the N. boundary-line of said lot, and running thence due west sixty-four (64) feet to said west boundary-line; thence on said west boundary line due south to the southwest corner of said lot; thence on the south boundary-line of said lot due east sixty-six (66) feet; and thence, in a straight line, to the beginning. And for the second of said parts of said lot numbered two, (2,) beginning at a point on said lot distant seventeen (17) feet due west from the east boundary-line of said lot and twenty-eight and a half (28½) feet due south from the north boundary-line of said lot, and running thence

22 due east seventeen (17) feet to the said east boundary-line; thence on said east boundary-line due south to the southeast corner of said lot; thence on the south side of said lot fifteen (15) feet; thence, in a straight line, to the beginning; together with the rights, privileges, hereditaments, and appurtenances to the same and each of them belonging or in any wise appertaining:

To have and to hold the same, together with all and singular the appurtenances, to, unto, and to the use of the said parties of the third part, their heirs, and assigns, and the survivor of them, his heirs, and assigns, upon the trusts and for the purposes hereinafter declared concerning the same. And the said Thomas P. Morgan and Caroline W. Morgan, his wife, parties of the second part, for the consideration aforesaid, and the sum of five dollars ($5) to them in hand paid by the said parties of the third part, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, assigned, transferred, set over, released, conveyed, and

23 confirmed, and do hereby grant, bargain, and sell, assign, transfer, and set over, release, convey, and confirm unto the said parties of the third part, their heirs, and assigns, all that piece or parcel of land situate and being in the city of Washington, and District of Columbia, and known and described on the ground-plot or plan thereof as part of lot numbered three, (3,) in square numbered nine, (9,) commencing at the northeast corner of G & Twenty-seventh streets, and running south along said Twenty-seventh streets, *and running south along said Twenty-seventh street*, one hundred and twenty-eight feet eight and a half inches, (128 feet 8½ inches;) thence east to the line of the Chesapeake and Ohio Canal; thence northwardly along said line of the canal one hundred & twenty-eight feet eight & a half inches (128 feet 8½ inches) to G street; and thence along said G street westerly to the place of beginning, together with the improvements, buildings, rights of wharfing, water rights, privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining:

24 To have and to hold the same, with the appurtenances, to, unto, and to the use of the said parties of the third part, their heirs, and assigns, the survivor of them, his heirs, and assigns, upon the trusts and for the purposes hereinafter declared concerning the same. And the said Thomas P. Morgan and George Rhinehart, for the consideration aforesaid, and the sum of five dollars ($5) to them in hand paid by said parties of the third part, at and before the sealing and delivering of these presents, the receipt of which is hereby acknowledged, have bargained, sold, assigned, transferred, set over, & delivered, and do hereby bargain, sell, assign, transfer, set over, and deliver unto the said parties of the third part, their executors, administrators, and assigns, the survivor of them, his executors, administrators, and assigns, all and singular, the stock, fixtures, machinery, & personal property of every description now in, on, around, or about the land and premises hereinbefore particularly described; and also all stocks, interests, debts, claims, and demands, and personal property whatsoever, owned by them jointly

25 or with any other or others, wheresoever the same may be, and from whomsoever due, to have, take, receive, and hold the same to, unto, and to the use of the said parties of the third part, their executors, administrators, and assigns, and the survivor of them, his executors, administrators, and assigns upon the trusts and for the purposes hereinafter declared of and concerning the same.

And it is hereby declared that the several and respective grants and assignments herein and hereby made to the said parties of the third part, and the survivors of them, his heirs, executors, administrators,

and assigns, are so made that they and the survivor of them, his heirs, executors, and administrators do and shall, with all convenient despatch, collect and render available all the said debts, stocks, interests, claims, demands, fixtures, machinery, and personal property of every description whatsoever; and also sell and dispose of all and singular the real & personal estates and effects above mentioned, and hereby conveyed and assigned as aforesaid, either at private or public sale, and for cash, or such terms of credit & cash as the said trustees or the survivor
26 of them may deem best. All public sales to be made upon reasonable public notice of the time, place, and terms of sale; and inasmuch as the said personal estates & effects, rights, credits, claims, and demands are scattered & dispersed, and as many of the debtors may be in doubtful or failing circumstances, so that suits against them might be attended with costs without any beneficial result, the said trustees, or the survivor of them, are & is hereby invested with the power to adjust and settle in their or his discretion by compromise such of the debts, rights, interests, claims, and demands belonging to the said Morgan & Rhinehart as the said trustees or the survivor of them may think proper, and upon such terms as they or he may deem best; and upon any sales of the real estate, and payment of the purchase-money, to convey the same to the purchaser or purchasers in fee, who shall be under no obligation to see to the application of the purchase-money; and the said trustees, and the survivors of them, shall have power and authority to appoint agents and attorneys under them, or the survivor of them, so far as, in their judgment, or the judgment
27 of the survivor, the same may be necessary, to enable them or the survivor of them to execute and fulfill the trust hereby devolved upon said parties of the third part, and the survivor of them; and upon further trust, that the said trustees, and the survivor of them shall apply the moneys which shall arise from the property and effects, rights, interests, stocks, claims, and demands, hereby conveyed, and assigns, when realized, as follows: First, to the payment of taxes and all expenses attending the sale and disposition of said property, and the collection of the said debts, interest, stocks, claims, and demands, including therein the compensation to agents, clerks, or attorneys employed by them, or the survivor of them, and the legal advice and services in the execution of this trust, and the usual commission allowed by the supreme court of the District of Columbia to trustees for similar trusts. Next, they or the survivor of them shall pay to one James S. Woods the sum of four hundred & sixty-seven dollars and seventy-three cents ($467 73) and interest. Next, to one Joseph W. Denty the
28 sum of two thousand and eighty-two dollars and sixty-nine cents ($2,082 69) and interest. To the First National Bank of Washington the sum of six thousand four hundred and sixty-five dollars and forty-two cents ($6,465 42) and interest, (the same being for the notes of H. N. Easly, nine hundred & sixty-five dollars & forty-two cents ($965 42.) John B. Davidson, two thousand five hundred dollars ($2,500), and the note of Morgan & Rhinehart, endorsed by W'm E. Spalding, three thousand dollars ($3,000.) Next, to the National Bank of the Metropolis, the sum of three thousand seven hundred & sixty dollars ($3,760,) being the balance due upon the note of Morgan & Rhinehart, for five thousand dollars ($5,000) and interest; and also to the National Bank of the Metropolis, the sum of twelve thousand two hundred & thirty nine dollars ($12,239,) being the amount of a check by Morgan, Rhinehart & Co., upon the National Metropolitan Bank of the city of Washington, dated June 29, 1866, and interest. Next, to Benjamin A. Kidder the sum of two hundred dollars ($200) and interest. Next, pay

29 one note of said Morgan & Rhinehart, indorsed by Samuel Stott, for six thousand dollars ($6,000) and interest, now held by the National Metropolitan Bank, in the city of Washington. Next, to John B. Turton the sum of one thousand seven hundred and seven dollars and fifty cents ($1,707 50) and interest. Next, to George T. McGlue, the sum of one thousand four hundred and fifty-one dollars and forty cents ($1,451 50) and interest. Next, to the owner or owners of the barge Quartz, the sum of four hundred and forty dollars & seventy-eight cents ($440 78) & interest. Next, to George P. Rhinehart, the sum of three hundred and fifty dollars ($350) and interest. Next, to George J. Johnson, the sum of two thousand two hundred & fifty dollars ($2,250) and interest. Next, to Crowell & Willis the sum of three hundred & eighty-one dollars and sixteen cents ($381 16) and interest. Next, to Philip H. Hauptman the sum of five hundred and ninety dollars ($590) and interest. And they or the survivor shall apply the proceeds of the sale of the land and premises, severally conveyed by the said Thomas P. Morgan and Caroline W. Morgan, his
30 wife: First, to the payment of the following sums to wit: To M. N. Galt & Bro., two hundred and seventy-nine dollars and thirty cents ($279 30) and interest; to J. B. Dodson, forty-nine dollars and fifty-six cents ($49 56) and interest; to Sam'l Redfern, two hundred and twenty-eight dollars & eleven cents ($228 11) and interest; to S. F. Savage, thirty-seven dollars & forty-five cents ($37 45) and interest; to George Parker & Sons, two hundred and eighty-two dollars and ninety-four cents ($282 94) and interest; to Henry Luttrell and Compa'y, three hundred & twenty-five dollars ($325) and interest; to John J. Beall, one hundred and twenty-five dollars ($125) and interest, which said amounts are now due to said parties, respectively, by said Thomas P. Morgan; and next, apply the residue of said proceeds of sale of said property, so conveyed by said Thomas P. Morgan & wife to the payment of the creditors of the said Morgan & Rhinehart, according to the terms of this trust; and the said parties of the third part, or the survivors of them shall divide and distribute all the residue of
31 the moneys which shall come into their hands, or the hands of the survivor of them, from the said real and personal estate, effects, debts, stocks, interests, claims, and demands, unto and among the other creditors of the said Morgan & Rhinehart, pari passee; and the said Morgan & Rhinehart do hereby appoint the said parties of the third part, and the survivor of them, their attorneys, and irrevocable, for the purpose aforesaid, to receive and receipt for any and all sums of money from whomsoever collected, and to do all other acts which they could do in the premises, and an attorney or attorneys under them or their survivor of them to appoint and at pleasure revoke, and they do hereby covenant with the said parties of the third part, and the survivor of them, that they will at any and all times do any further act or deed which may be deemed necessary for the further and better conveying and assigning the estate and effects, claims and demands unto them, or the survivor of them, for the purposes aforesaid.

In testimony whereof the said parties of the first and second
32 parts have hereunto set their hands and seals, respectively, the day and year first hereinbefore written.

THOMAS P. MORGAN. [SEAL.]
CAROLINE W. MORGAN. [SEAL.]
GEORGE R. RHINEHART. [SEAL.]
SOPHIA C. RHIN'HART. [SEAL.]

Sealed, signed, & delivered in the presence of—
N. CALLAN.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Nicholas Callan, a notary public duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Thomas P. Morgan & George Rhinehart, parties to a certain deed bearing date on the 15th day of February, A. D. 1867, and hereunto annexed, personally appeared before me, in my county aforesaid, the said Thomas P. Morgan & George Rhinehart being personally well known to me as the persons who executed the said deed, and each for himself acknowledged the same to be his act & deed.

Given under my hand and official seal this 15th day of February, A. D. 1867.

[SEAL.]

N. CALLAN,
Notary Public.

33 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Nich's Callan, a notary public duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Caroline W. Morgan, wife of Thomas P. Morgan, a party to a certain deed bearing date on the 15th day of February, A. D. 1867, and hereto annexed, personally appeared before me, in my county aforesaid, the said Caroline W. Morgan being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Caroline W. Morgan, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 15th day of February, A. D. 1867.

[SEAL.]

N. CALLAN,
Notary Public.

34 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, Nicholas Callan, a notary public duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Sophia Rhinehart, wife of George Rhinehart, a party to a certain deed bearing date on the 15th day of February, 1867, and hereto annexed, personally appeared before me, in my county aforesaid, the said Sophia Rhinehart being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed fully explained to her by me, she, the said Sophia Rhinehart, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand & official seal this 15th day of February, A. D. 1867.

[SEAL.]

N. CALLAN,
Notary Public.

35 *Summons to answer.—Issued May* 25, 1868.

In the supreme court of the District of Columbia, May 25th, 1868.

GEO. FRED. MCLELLAN ET AL.
vs.
RILEY A. SHINN ET AL. } 1290. Equity docket 9.

The President of the United States to Riley A. Shinn, Tho's P. Morgan, George Rhinehart, and Erwin G. Comstock, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable: otherwise, the bill may be taken for confessed.

Marshal's return.

"Summoned.

"D. S. GOODING,
"*Marshal.*

"MAY 26TH, 1868."

36 *Appearance of C. M. Mathews for def't Shinn.—Fil'd June* 27 1868.

MCLELLAN & DODGE
vs.
R. A. SHINN ET AL. } 1290. Equity dock. 9.

At the request of C. M. Mathews, esq., his appearance for defendant Shinn, is hereby entered this 27th of June, 1868.

By the clerk.

Answer of defendant Riley A. Shinn.—Filed Sept. 12*th*, 1868.

In the supreme court of the District of Columbia.

MCLELLAN ET AL.
vs.
SHINN. } Equity. No. 1290.

The answer of Riley A. Shinn, defendant, to the bill of complaint of George F. McLellan and others against him in chancery exhibited.

37 This defendant, now and at all times, reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in complainant's said bill of complaint contained, for answer thereunto, or unto such part or parts thereof as this defendant is advised is material for him to make answer unto, answers and says he admits the purchase, as in said bill stated, of the steamship "City of Richmond" by Morgan, Comstock, Kelley, and Savage,

and the fact of her change of name and reënrollment as stated. He denies that, on the 2d day of October, A. D. 1865, or at any other time, the said defendant did purchase from James R. Kelley, or any other person, his interest, being one-fourth part, in said steamship; but says that, on or about the 2d day of October aforesaid, he did loan to the said Kelley the sum of two thousand dollars, and that as security for the said loan the said Kelley did execute and deliver to the said defendant a bill of sale of the interest of said Kelly in said steamship "Fairfax," a copy of which said complainants file with their bill of complaint,

38 and that at the time of the execution and delivery aforesaid the said defendant and the said Kelly conferred with the said Morgan, Rhinehart and Company, agents or ship's husbands of said vessel; and that the sum of two thousand dollars, loaned as aforesaid, was by said defendant, by the order of said Kelly, paid over to Thomas P. Morgan, of the said firm of Morgan, Rhinehart & Co., and that the same was receipted for as paid for the said Kelly by the said defendant; and further, that said sum was applied on behalf of repairs upon said vessel, and that none of the said sum of $2,000 was paid to the said Kelly; that, on or about the execution and delivery aforesaid the said Kelley, being about to depart from the District aforesaid, to be absent on the coast of the Gulf of Mexico, and in order that the said defendant might reimburse himself the loan aforesaid, and having no other pecuniary interest in the District aforesaid than whatever sum or sums might become due him as profits of the said steamer "Fairfax," and to be paid him by the said firm of Morgan, Rhinehart & Co., *and*, by his letter of attorney, dated and delivered on the 2d day of October,

39 1865, make, constitute, and appoint the said defendant his true and lawful attorney, for him to collect and receive all moneys that might become due him in said District, and to attend to all other business for him therein, which said letter herewith filed, marked "Defendant's Exhibit A," defendant prays may be made a part of this his answer.

That in all correspondence *and* after the execution and delivery aforesaid, (and of which execution and delivery aforesaid defendant charges that said firm was cognizant and had notice, both actual and constructive,) with the said Kelly, and in all dealings with the said defendant regarding said vessel the said Kelly was, by said firm, treated as the owner of one-fourth part thereof, and the said defendant as his agent or attorney.

That, after the commencement of a suit brought in the supreme court of the District aforesaid by said defendant against said Kelly for the recovery of said loan, and the attachment in the hands of Morgan, Rhinehart & Company of credits of said Kelly sufficient for the payment thereof, the said Thomas P. Morgan did, before Justice

40 Nicholas Callan, in the District aforesaid, make affidavit that said firm did always consider said defendant to be the agent of said Kelly, and not joint owner of said steamship, which said affidavit is now lost, but which, if found, defendant prays he may file as a part of this his answer.

Defendant admits the recording of said bill of sale and the issuance of the certificate of enrollment, dated Oct. 23, 1865, as in said bill stated.

Defendant does not know, and cannot admit, that said vessel, when purchased, required extensive repairs, and that repairs to the amount of $13,206 34 were made upon her under the authority and request of said owners by the said Morgan, Rhinehart & Company, or that any

repairs were put upon her, and of the amount of said repairs, if any; demands strict proof.

Defendant declares that the said vessel when destroyed had earned profits, which came into the hands of said Morgan, Rhinehart & Co., and which were applicable to the said repairs, had any been
41 made; that said Morgan, Rhinehart & Company have, at various times, declared to the said Kelly that the net proceeds of three trips made by said vessel from Washington City, D. C., to New York City, amounted to $5,000; that, after the destruction of the vessel by fire, the said firm called on the said defendant to consent in writing, as the agent of said Kelly, that the sum of $12,000 should be received from the insurance company in full payment of the insurance due upon said vessel, & that said sum would pay all expenses and leave a surplus for division among the owners, the said vessel having cost in all about $11,000, her original cost having been $4,700.

That shortly after the bringing of the suit aforesaid by said defendant against said Kelly, and at the time of said affidavit, the said Morgan informed said defendant that there was in the hands of said Morgan, Rhinehart, & Co. to the credit of the said Kelley about $6,000.

Defendant does not know and cannot admit the failure or insolvency of said insurance company, or the use of due diligence by said
42 Morgan, Rhinehart & Co. for the recovery of said insurance money, but of these alleged facts requires strict proof.

Defendant admits the assignment of said Comstock to the said Morgan & Rhinehart, and of the said Morgan & Rhinehart to the said complainants, as alleged.

And said defendants having fully answered or denied all the allegations of said bill, humbly prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

RILEY A. SHINN.

DAVIDGE & MATHEWS,
Def'ts Solicitors.

Before the subscriber, a notary public in & for the city of Washington, District of Columbia, personally appeared Riley A. Shinn, defendant, and made oath on the Holy Evangelists of Almighty God that the matter & things stated in the aforegoing answer as of his own knowledge are true, and, as stated of the knowledge and information of others, are true to the best of his knowledge and belief.

RILEY A. SHINN.

Sworn to & subscribed before me this 10th day of September, 1868.
[SEAL.] ED. SHOEMAKER,
Notary Public.

43 *Def'ts' Exhibit "A."*

Know all men by these presents that I, James R. Kelley, of the city of Philadelphia, and State of Pennsylvania, have made, constituted, and appointed, and by these presents do make, constitute and appoint Riley A. Shinn, of the District of Columbia, true and lawful attorney for me and in my name, place and stead, to receive all mon*ies* that may be now due or hereafter become due me in said district, and to attend for me to all matters in which I may have an interest or concern, either direct or indirect, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present,

with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, the second day of October, in the year one thousand eight hundred and sixty-five.

JAMES R. KELLY. [SEAL.]

Sealed and delivered in presence of—
JENKIN THOMAS.
CHARLES M. MATHEWS.

44 DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it known that, on the second day of October, one thousand eight hundred and sixty-five, before me a notary public in and for the District of Columbia, duly commissioned and sworn, personally came James R. Kelly, and acknowledged the above power of attorney to be his act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office, the day and year last above-written.

[SEAL.] JENKIN THOMAS,
Notary Public.

General replication.—Filed Oct. 6, 1868.

In the supreme court of the District of Columbia.

DODGE & MCLELLAN } In equity. No. 1290.
vs.
RILEY A. SHINN. }

These repliants saving and reserving to themselves all manner of advantage of exception to the insufficiencies of the said answer, for
45 replication thereto, say that they will aver and prove their said bill to be certain, true, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants. Without this that any other matter or thing whatsoever in the said answer contained material in the law to be replied unto, confessed, avoided, or traversed, or denied is true. All which matters and things these repliants are and will be ready to aver and prove as this court shall direct, and humbly prays as in their said bill they have already prayed.

JNO. D. MCPHERSON,
For Comp'ts.

OCT. 6, 1868.

Letter of receivers of Columbian Ins. Co., &c.—Filed Jan'y 21, 1869.

OFFICE OF THE RECEIVERS OF COLUMBIAN INS. CO.,
New York, Jan'y 20, 1869.

DODGE & MCLELLAN }
vs.
RILEY A. SHINN. }

R. J. MEIGS, Esq.,
Clerk Supreme Court, Washington, D. C.

46 D'R SIR: Enclosed please find certificate of the owners of st'r

Fairfax, dated Feb'y 15, 1866, to be used in the above case as per advice of Jno. D. McPherson, as counsel. Please return when done with, & oblige

Your, ob't,

GEO. A. OSGOOD,
CYRUS CURTIS,
Rec'v'rs.
P'r JO. H. LEIEDS, *Ass't.*

WASHINGTON, *Feb'y* 15, 1866.

We, the undersigned, do hereby certify that Mr. E. G. Comstock was duly authorized by us to act as the husband of steamer "Fairfax," and had full authority from us to insure the ship in his own name, for the benefit of all concerned.

THO'S P. MORGAN,
RILEY A. SHINN,
JOS. L. SAVAGE,
Owners of ¼ each of Steamer Fairfax.

Order setting cause for hearing.—Filed 29th of Sept., 1869.

DODGE & MCLELLAN
vs.
RILEY A. SHINN ET AL. } 1290. Equity dock. 9.

Upon motion of J. D. McPherson, esq., sol'r for compl'ts, it is this 29th of Sept., 1869, ordered that the above cause be set down for hearing and placed on October calendar.

By the clerk.

47 *Complainant's testimony.*

In the supreme court of the District of Columbia.

DODGE & MCLELLAN
vs.
RILEY A. SHINN. } No. 1290. In chancery.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, on this 19th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present, at my office, No. 4, Columbian College Law Building, 5th st. bet. D and E sts., in the city of Washington, in said district, Thomas P. Morgan, George Rhinehart and others, to testify on the part and behalf of the complainants in a certain cause now depending in the supreme court of the District of Columbia, wherein Rob't P. Dodge & Geo. Fred. McLellan are complainants, and Riley A. Shinn is defendant.

M. ASHFORD,
Examiner in Chancery.

58 In the supreme court of the District of Columbia.

ROB'T P. DODGE & GEO. FRED. MCLELLAN
vs.
RILEY A. SHINN. } Equity. No. 1290.

At an examination of witnesses in the above-named cause, begun

and held at the office of examiner Ashford, on Thursday, November 19th, 1868, at 10½ o'clock a. m., the following depositions were taken, viz:

MR. THOMAS P. MORGAN, a witness of lawful age, produced, sworn, and examined for and on behalf of the complainants, deposes and says, as follows:

In answer to questions by Mr. McPherson:

I was one of the firm of Morgan, Rhinehart and Co., a firm which existed from 1863 to 1866. The firm of Morgan, Rhinehart and Co. consisted of Thomas P. Morgan, George Rhinehart, & Erwin G. Comstock. It was dissolved on the 30th of June, 1866, Comstock retiring; and by deed, bearing date July 6th, 1866, the said Comstock assigned to the other partners, Morgan & Rhinehart, all his right, title, claim, and interest in and to all the property of every description and
49 nature belonging to the said firm of Morgan, Rhinehart & Co., consisting of steamships and their appendages, fixtures and furnitures of every description, as well as anchors, chains, cables, and including all book-accounts, papers, evidences of debt, debt, bills, notes, matured or not, as appears by "Exhibit C" filed with the bill of complaint, which was signed by all the parties in my presence.

On the 15th of February, 1867, I and the said Rhinehart assigned to the complainants in this case, Dodge & McLellan, all the personal property, rights, and credits belonging to us by deed bearing that date, of which a true copy is filed, with the bill of complaint marked "Exhibit D." In the month of August or September, 1865, I, with Erwin G. Comstock, James R. Kelly, and Joseph L. Savage, purchased the steamer "City of Richmond," while she was undergoing repairs; her name was changed, by permission of the Treasury Department, to "Fairfax" and was enrolled under that name. In making up the estimate of cost and repairs to about the first of October, 1865, it was estimated that the whole would amount to about $8,000. Morgan, Rhinehart and Co. had paid for the purchase and repairs of
50 the vessel up to this date, and Kelly had told us: "When the money for his quarter share was needed to call upon Riley A. Shinn." I called upon him, in person, and received from him the sum of $2,000 for which I gave him a receipt. The vessel was placed in the line of steamers running between New York and Washington, known as the Atlantic Steamship Company, and she continued to run in this line until January, 1866, when she took fire at our wharf on G street, and was partially destroyed and abandoned to the underwriters, she having been insured in the Columbian Marine Insurance Company of New York for the sum of $1,500. Nothing of the said insurance money was ever obtained, except $675 which was collected some weeks ago. The company failed the very day that was fixed for the payment of the money. The original cost of the vessel was $4,700, and the first bill of repairs above spoken of amounted to $3,388 63; other bills of repairs and supplies were incurred subsequently to the amount of $13,206 34. Morgan, Rhinehart and Co. advanced all this money for the ship, and the same was charged upon their books to the steamer "Fairfax" and
51 owners. Nothing was ever received by Morgan, Rhinehart and Co. on that account. Our firm acted as agents for the ship, commonly called ship's husbands, at the request of all the owners. In the month of October, 1865, on or about the 23 day, at the request of Riley A. Shinn, I took out a new enrollment of the vessel in the name of Thomas P. Morgan, Joseph L. Savage, E. G. Comstock, and Riley A. Shinn.

I understood from Mr. Kelly that he had sold his interest in the vessel to Riley A. Shinn, and when Mr. Shinn applied to me to have the papers changed so as his name might appear as one of the owners, I was satisfied that it was right, and made oath accordingly as will appear by the enrollment. After payment of the accounts by our firm as heretofore stated, I called on Mr. Shinn for his portion or share of the account, and he refused to pay any part of the account; the reasons, if he gave any, I don't now remember; the interview was very short. Previous to this, about February, 1866, Mr. Shinn had called upon me for his share of the insurance money, and I then told him that nothing had been received, and shortly after this we heard of the failure
52 of the company. I had no other interview, that I remember of, with Mr. Shinn previous to the commencement of this cause, except about the time that Mr. Shinn sued Mr. Kelly to recover back the $2,000. I don't remember, however, anything that transpired then affecting this suit. Before the purchase of the "Fairfax," Mr. Shinn had frequently spoken to me of his desire to become interested in some steamship property, particularly in the line to Philadelphia.

THO'S P. MORGAN.

Sworn to and subscribed before me, this 19th day of November, A. D. 1868.

M. ASHFORD, *Examiner.*

Adjourned until December 26th at 11 o'clock a. m.

M. ASHFORD, *Examiner.*

1868, Saturday December 26th, 11½ o'clock a. m. Met pursuant to adjournment; when Mr. T. P. Morgan, in his cross-examination, deposes and says, as follows:

I had an interview with Mr. Riley A. Shinn at the time of the payment of the $2,000 alluded to by me in my examination-in-chief. Mr. Shinn told me that it was money advanced by him for Captain Kelly to pay for his (Kelly's) share of the steamer. I called on Mr.
53 Shinn. The wording of the receipt given by me for the money I don't exactly remember, but the purport was: "Received of Riley A Shinn $2,000 for and on behalf of Captain James R. Kelly." The vessel earned some money, the amount I don't recollect, but the amount can be ascertained by reference to our books. The vessel was repaired in her hull, *corked*, her decks repaired and *corked*, sails and spars, rigging, painted, boiler, engine, smoke-stack, &c.; these were made soon after her purchase. Morgan, Rhinehart & Co. paid the bill for such repairs. A portion of this $2,000 went to paying for the repairs of the vessel, and the remainder for its purchase. In company with Mr. Shinn I went before Mr. Callan and made an affidavit, the purport of which I do not now remember. The letter now shown me, marked "Exhibit T. P. M, No. 1," I recognize as a letter written by me to Captain Kelly, who was at that time in Mobile in command of the boat "Arlington."

(The defendants' counsel offers in evidence paper marked "Exhibit T. P. M. No. 2, which is proved by the witness; also, paper marked T. P. M. No. 3, which is also duly proved by the witness.)

54 After the bill of sale passed, I recognized Mr. Shinn as owner of the boat, though I communicated with both him and Kelly; I think there is a balance due Captain Kelly on the steamship "Arling-

ton;" the amount I do not remember; the amount against the steamship "Fairfax" was against the ship and owners generally, and not against the owners individually.

Reëxamined:

My recollection of the purport of the receipt for $2,000 given Mr. Shinn is very positive; the receipt was given in September or October, 1865.

(The plaintiff gives notice to the defendant to produce this receipt, and does not waive any objections to this testimony by the above interrogatory.)

THO'S P. MORGAN.

Sworn to and subscribed before me this 26th day of December, A. D. 1868.

M. ASHFORD, *Examiner.*

Adjourned until Monday, January 4th, A. D. 1869, at 10 o'clock a. m.

M. ASHFORD, *Examiner.*

55 1869. Monday, January 4th, 10½ o'clock a. m. Met pursuant to adjournment; when the complainant produces as a witness Mr. Geo. Rhinehart, whose examination, by consent, was adjourned to Monday, January 11th, 1869, at 11 o'clock a. m.

M. ASHFORD, *Examiner.*

1869. Monday, January 11th, 10 o'clock a. m. Met pursuant to adjournment; when the complainant produced as a witness Mr. GEORGE RHINEHART, who, being duly sworn, deposes and says:

I was a member of the firm of Morgan, Rhinehart & Co. at the time of the loss of the steamer "Fairfax;" at the time of the burning of the vessel, and previous thereto, the ownership of the vessel stood in the names of E. G. Comstock, Joseph L. Savage, Thomas P. Morgan, and Riley A. Shinn; the firm of Morgan, Rhinehart & Co. was the ship's husband. During the time of the running of the vessel, up to and after the time of her loss, Mr. Comstock had an office in New York City, and acted in behalf of the "Fairfax;" he superintended the insurance of the vessel; after the loss of the vessel, Mr. Shinn came to me and
56 wished to know if the vessel was insured; I told him that the firm had received a telegram from Mr. Comstock, stating that the vessel had been insured for $15,000; Mr. Shinn said he was "glad to know it." Mr. Comstock, whilst in New York, wrote to the firm a number of letters, among which was one, dated March 8th, 1866, written by a brother of Mr. Comstock, who was his confidential clerk, and who often wrote his letters; I saw this letter at or about its receipt by Mr. Morgan.

(The letter is offered in evidence, and marked Exhibit E. G. C. No. 1.)

The net loss, mentioned in the letter as amounting to $19,162 72, includes the amount paid in the beginning for the vessel, and the charges of her first repairs, less about $2,129 64; nothing except $2,000 was ever advanced by Mr. Shinn; the whole loss fell upon the firm of Morgan, Rhinehart & Co. The $2,129 64 deducted as above, was the net earning of the steamer "Fairfax" during the time she was running in the Atlantic Steamship Line from New York to Washington; when Mr. Comstock wrote the letter, he had made up four accounts of the steamer "Fairfax," for the use of the four quarter-owners, in which account
57 he gave credit for the net earnings, amounting to about $2,129 64;

these net earning' were merged and sunk in the Atlantic Steamship Company, and therefore that amount was a total loss to the owners of the steamer "Fairfax," and was borne by the firm of Morgan, Rhinehart & Co. The net earning loss, added to the amount mentioned in the letter, makes about $21,292 36, the entire loss sustained by the owners, of which one-fourth is due Riley A. Shinn, amounting to $5,323 09, less the $2,000 advanced by him—making $3,323 09. The difference between this amount and that named in the bill, arises from the fact that the account, by which the amount in the bill was arrived at, started with the assumed basis that the first charges against the vessel, and the purchase-money paid for her, amounted, in the aggregate, to the even sum of $8,000 instead of $8,088 63, or thereabouts. On the 6th day of July, 1866, E. G. Comstock assigned, among other things, all his interest in the debt due for advances on account of said vessel to his copartners, Morgan & Rhinehart; and Morgan & Rhinehart assigned, among other things, all their right and interest in the said debt to Robert P. Dodge and Geo. Fred. McLellan.

GEO. RHINEHART.

58 (The defendants' counsel reserves his right to cross-examine this witness by consent of complainant's counsel.)

Sworn to and subscribed before me this 11th day of January, 1869.

M. ASHFORD,
Examiner.

Adjourned until the 11th day of February, A. D. 1869, at 10 o'clock a. m.

M. ASHFORD,
Examiner.

1869. Thursday, February, 12th, 10½ o'clock, a. m. Met pursuant to adjournment, when the examination of George Rhinehart was taken and continued, as follows:

(The complainants offer in evidence the paper-writing marked R. A. S. No. 1, and the envelope in which it was contained, which are already filed in the case, Counsel for defendant admits defendant's handwriting (Riley A. Shinn) in said exhibit.)

In answer to questions by complainants' counsel:

I had a letter dated previous to this certificate some weeks ago, written by Mr. Comstock to Mr. Morgan, requesting him to get a certificate of the owners of the steamer Fairfax in Washington,
59 stating that he (Comstock) was authorized by said owners to insure the steamer Fairfax; not knowing whether there was such a certificate given, I sent the letter to Mr. Morgan, who was then in New York, to ascertain from said insuranee office whether there was such a certificate on file. Mr. Morgan says that he has either lost or mislaid the letter. Mr. Morgan told me that he went to the insurance office and there was a certificate on file, and that some of the officers of the company were not willing to let him have the certificate, but said that they would send it to the court, which Mr. Morgan told me had been done. On looking at the certificate I recognize the signatures of Mr. Morgan's and Mr. Savage, but am not positive of Mr. Shinn's, but think it is his signature.

Cross-examined:

The handwriting of the certificate, marked R. A. S. No. 1, is that of

Mr. Morgan, both the body of it and the margin, "owners of ¼, &c." I am not able to state the exact amount of the earnings of the steamer "Fairfax," but Mr. Comstock, who was the managing agent in
60 New York, estimated them at somewhat over $2,000. I cannot say who advised the insurance of the steamer "Fairfax." I did not know anything about it until after it was insured. I did not, to the best of my recollection, tell Mr. Shinn that Captain Kelly advised the insurance of the vessel. All I knew about this business was that Mr. Morgan had received $2,000 from Mr. Shinn on Capt. Kelly's account. At or about that time they were fixing up the steamer to go South, on which Mr. Kelly agreed to go. I having heard, through Mr. Comstock's letters, that Mr. Kelly wished an interest in the steamer going South, and, from what I could gather among the parties on the boat, was led to believe that Mr. Kelly had transferred his interest in the Fairfax to Mr. Shinn for the purpose of taking interest in the steamer going South, and I made no further inquiry then in the matter, but afterwards, upon the arrival of the Steamer "Fairfax," I asked the captain to let me look at the ship's papers. I saw among others as owners Mr. Shinn's name as ¼ owner; concluded then that such was the fact and made no further inquiry about it. My impression in regard to the ownership of
61 the Fairfax was, first, that Mr. Shinn had advanced money to Captain Kelly, but afterwards I was led to believe that Captain Kelly had transferred his interest in the Fairfax to Mr. Shinn. I do not recollect Mr. Shinn calling on me personally to find out what our firm of Morgan, Rhinehart and Co. owed Captain Kelly. I don't recollect saying to Mr. Shinn in regard to the Fairfax that his $2,000 was gone. I was not aware that Mr. Shinn held a power of attorney for Captain Kelly. I don't remember that he ever told me of it.

GEO. RHINEHART.

Sworn to and subscribed before me this 11th day of February, A. D 1869.

M. ASHFORD,
Examiner.

(The defendant gives notice to the complainant to produce the policy of insurance and the vouchers for expenditures on account of repairs spoken of in Exhibit No. 1, E. G. C.)

May 22nd, 1869, 12 o'clock m. Met pursuant to adjournment, when the complainant produced as a witness JAMES S. WOODS, who
62 being duly sworn, deposes and says:

I am book-keeper in the Treasury Dep't. I was with Morgan and Rhinehart from March, 1863, to February, 1867. I was their book-keeper and confidential clerk. I would know from my position the amount of repairs paid for the Fairfax by Morgan, Rhinehart and Co.

(Complainant here presents to witness sundry vouchers of expenditures made by Morgan, Rhinehart and Co. by reason of steamer Fairfax and referred to in Exhibit E. G. C. No. 1, which witness says are correct and were paid by the firm.)

The aggregate amount shown by these vouchers is $20,038 83. There were many minor little jobs done in connection with getting the steamer ready, for which vouchers were not received. I do not know how much was paid on account of these minor jobs, because I did not have the disbursement of them, but I do know that some vouchers might have been taken which are not included among those now exhibited, since Mr. Comstock,

who was in New York, and who made some disbursements there, might or might not have taken vouchers of such expenses. I know nothing excepting this that the books call for $21,294 97 making the sum of $1,256 14 yet to be accounted for. This or a part of it was certainly made without vouchers. I know, however, from my own knowledge as
63 book-keeper, that the sum of $21,294 97 was paid by Morgan Rhinehart and Co. on ac. of the steamer Fairfax. Shinn never advanced anything except $2,000. The difference between $21,294 97, the amount Mr. Comstock names in his letter, Exhibit E. G. C. No. 1, $18,182 72, arises from alleged earnings said to have been made by the boat; not one cent of which was ever received by Morgan & Rhinehart. These alleged earnings were made when she was running in the Atlantic Steamship Company, & they were merged among its losses. In reference to the statement made by Captain Winters, "that he (Woods) said that in two trips of the Fairfax her gross earnings were $4,000," witness says it is very possible that it is true, but those two trips mean two round trips, and those are the gross earnings from which you deduct the running expenses, fuel, &c., there will be left a very small margin. Her ordinary round trips did not amount to that; sometimes she did not pay her expenses. Whilst the said boat was running I was under the impression that Riley A. Shinn was ¼ owner; these impressions were derived from conversations with Morgan and Comstock.

JA'S S. WOODS.

Sworn to and subscribed before me this 22nd day of May, A. D. 1869.

M. ASHFORD,
Examiner.

64 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Mahlon Ashford, examiner in chancery, do hereby certify that, in pursuance of due notice, the foregoing depositions were taken down and by me reduced to writing in the presence of, and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence and in the presence of the parties' solicitors who were then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD,
Examiner in Chancery.

65 *Defendants' testimony.*

In the supreme court of the District of Columbia.

DODGE & MCLELLAN
vs.
RILEY A. SHINN. } No. 1290. In chancery.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, on this 11th day of February, in the year of our Lord one thousand eight hundred and sixty-nine, I, Mahlon Ashford,

an examiner in chancery, did cause to be personally at my office, Columbian College Law Building, 5th st., bet. D & E sts., in the city of Washington, in said District, Riley A. Shinn, Captain William H. Winters, and others, witnesses, to testify on the part and behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein George Fred. McLellan & Rob't P. Dodge are complainants, and Riley A. Shinn is defendant.

M. ASHFORD,
Examiner in Chancery.

66 And thereupon the defendant produced as a witness Mr. RILEY A. SHINN, who, being duly sworn, deposes and says:

On October 2d, 1865, Captain Kelly called on me about 7 or 8 o'clock in the morning. Told me that afternoon he was going to leave for Mobile in the ship Arlington. Morgan & Rhinehart had offered him ¼ interest in the old "City of Richmond," which used to sail from Philadelphia to Richmond. They had bought her for a little over $4,700. They said she was worth over $10,000. That he had no money, & wanted to know if I had any I would advance him in case they wanted any. That Morgan & Co. had told him they didn't want any; but, in case they did, he wanted to be on the sure side. Having known Capt. Kelly a number of years I said "Yes; how much do you want." He says, "I dont know; Morgan said this morning they did not want any from me." I told him to wait, and we would go and see how much was wanted; that I did not want to do business blind. We went and
67 saw Maj. Morgan, at his office, at G-street wharf. Capt. Kelly asked Morgan how much he wanted from him; that Mr. Shinn would be responsible for it. Morgan told him that he didn't believe they would want $1 from him. I told Maj. Morgan that I came down to help a friend, and wanted to know how much money he wanted. He repeated that he didn't think they would want $1, but they wouldn't want over $1,000—$12 hundred at the outside, and I told him that I would advance it for Kelly. After we came out of Morgan's office, Kelly said he had to go to Georgetown to get his papers, and I proposed to him to go over with me. In going over I asked him if I lent him money how was he going to secure in case he died in Mobile. He told me he would give me a bill of sale on his ¼ interest, and a power of attorney to act for him.

(The complainant objects to all the foregoing testimony.)

We went to Georgetown, and called on Mr. Mathews. Mr. Mathews drew up a bill of sale and power of attorney. Capt. Kelly pro-
68 posed to take $1,800. About 5 days afterwards Morgan called on me for $2,000 on account of Capt. Ja's R. Kelly. I told him that it was very unexpected; that he had said $1,200 would be the outside. He said that was Captain Kelly's quarter or share. I gave him $2,000, and he gave me a receipt in Capt. Kelly's name. The receipt I gave to Mr. Davidge, and it is either mislaid or lost. Two or three days afterward I called on Mr. Mathews to find out what to do, in order to be secured in case of Kelly's death. He advised me to have my bill of sale recorded, which I did; and they afterwards, I understood, changed Kelly's name to mine as ¼ owner. I never called on Mr. Morgan to request him to have my name entered as ¼ owner, nor to have the ship's papers changed. The first I had to do with this firm about this business was on the morning of the burning. On that morning I saw Mr. Rhinehart at the wharf. I asked him if the ship "Fairfax" was insured. He said he thought it was, but he had telegraphed to Comstock to

69 come on from N. York. The next day Comstock called at my office. I wasn't there, but met him on 15th street, in this city, and he told me she was insured for $15,000; that he didn't think they could get over $12,000; that in case he got the $12,000 the ship hadn't cost more than 10 or 11 thousand dollars, and that none of them, and especially Kelly, would lose anything by the operation. [In a few days after he called on me to sign a paper. I advised him to telegraph to Kelly. He said that Kelly was in Mobile with a broken leg, and as I had a power of attorney, I could act for him.]

(The complainant objects to the last sentence enclosed in brackets.)

He said that he and Morgan, Rhinehart, and Savage were willing to take $12,000, which the company had offered, and he was satisfied Kelly wouldn't object. I signed the paper in my own name, he telling me that it was not necessary for me to sign, as agent for Kelley, as I had his power of attorney. Some weeks after, Morgan called on
70 me to get me to advance $500 more on the "Fairfax." I declined to advance any more, and told him that as he was in communication with Kelly that he (Kelly) could pay more, but I wouldn't, as I considered my $2,000 lost, anyhow. A few months after, Kelly came on to Philadelphia; I went on to see him about my $2,000, and Kelly told me that Morgan & Rhinehart owed him some $7,000 or $9,000, and as soon as he could get a settlement with them, he would pay me. I called some three or four times during the summer, and this was always his excuse.

(The complainant objects to all this testimony given since his last objection.)

I finally told Kelly that this thing must be settled up. I called on Mr. Davidge, who advised me to see Mr. Morgan, which I did, and told him what Capt. Kelly said, and he (Morgan) denied owing him (Kelly) what he (K.) said he (M.) did owe him, but that the debt was enough to cover what Kelly owed me (S.;) that he had deducted from his
71 debt to Kelly to help to raise the steamer "Fairfax." I told him I would sue Capt. Kelly and attach what was owing by him to Kelly. I requested him to meet me at Callan's office, on 15th and F. st's. We met there, and he made an affidavit recognizing Capt. Kelly as owner of $\frac{1}{4}$ interest in the "Fairfax," and that he didn't owe Kelly $7,000 or $9,000, but did owe him enough to cover my claim. I then took my papers to Mr. Davidge, and told him to attach the money due Kelly in the hands of Morgan & Rhinehart.

(The complainant objects to all the above testimony.)

I abandoned this suit on going to Philadelphia, and finding Kelly had no money, and on Morgan & Rhinehart's failure. I recognize my signature to the paper marked Exhibit R. A. S. No. 1. This paper was the one Comstock requested me to sign, as above referred to. I called on Mr. Rhinehart, at the failure of Morgan, Rhinehart & Co., and before abandoning the suit against Kelly; he showed me his books, and
72 the amount that was charged against the "Fairfax," and remarked that he thought my $2,000 was gone. I never called on Morgan for my share of the insurance money. None of the firm of Morgan, Rhinehart & Co., ever called on me for any money for repairs for the vessel. The first claim was made by the complainants in this suit. I told Morgan & Rhinehart that I held a power of attorney for Capt. Ja's R. Kelly.

(Complainant gives defendant notice to produce the affidavit of Mr. Morgan, above referred to.)

Cross-examination of complainant renewed.

Adjourned until Friday, the 26th day of February, A. D. 1869.

M. ASHFORD, *Examiner.*

Sworn to before me this 11th day of February, A. D. 1869.

M. ASHFORD, *Examiner.*

Feb. 26th, 1869, 11 o'clock, a. m. Met pursuant to adjournment. Mr. Riley A. Shinn, having been duly sworn, was cross-examined as follows:

73 In answer to questions by Mr. McPherson:

Kelly went away the same afternoon I made the arrangements with Morgan to loan the money. I did not see him afterwards till the following spring, when I went to Philadelphia to demand payment of the $2,000 I advanced for him. I never had any written acknowledgement of Kelly for the advance of this money. I think I charged it on my private account against Kelly.

(It is agreed by counsel that the book of private account be produced before the examiner, and an abstract made of the charge, if found.)

My book-keeper keeps both my private and business accounts. The affidavit of Mr. Morgan was made a little before I sued Capt. Kelly; I gave it, with other papers, to Mr. Davidge. Mr. Kelly made no answer to the suit against him, that I know of. It was postponed from time to time till after the failure of Morgan & Rhinehart. The bill of sale was drawn to me absolutely, and not as a deed of mortgage, upon the recommendation of Captain Kelly; and, I think, Mr. Mathews advised me afterwards to take a power of attorney so as to secure Kelly.

74 It was the same afternoon that the papers were executed between Kelly & me that he went away, I think. I had no idea that my name would appear as quarter owner, but thought that it was like a mere deed of trust. I have known Capt. Kelly for some 25 years. I never before had any business relations with him. I did not know that the papers were taken out in my name till after the burning of the "Fairfax." I cannot remember that I ever shipped anything by this vessel. I was shipping bottled ale to New Orleans about this time, and it may have been carried by her as far as New York. I am positive that I was aware that the papers would not be taken out in my name, but only as a deed of trust. Mr. Mathews drew the bill of sale.

R. A. SHINN.

Sworn to and subscribed before me this 26th day of February, A. D. 1869.

M. ASHFORD, *Examiner.*

Adjourned until Saturday, the 11th day of May, A. D. 1869, at 11 o'clock, a. m.

M. ASHFORD, *Examiner.*

75 1869. Saturday, May 1st, 11 o'clock a. m. Met pursuant to adjournment, when the defendant produced as a witness Captain W. H. WINTERS, who, being duly sworn, deposes and says as follows:

I was captain of the "Fairfax" from the 15th of September, 1865, until she burnt, January 3d, 1866.

Ques. Who were the owners of the vessel when you took charge?

Ans. Mr. Comstock's, Capt. Kelley's, & Morgan's names were on the

paper as owners. While I had charge of her there was some carpenter work and caulking done to her hull; some brasses were put in the machinery. I should not think that all repairs put on her, outside of the machinery, would amount to $4,000. Not having supervision of the machinery, I cannot tell the amount of repairs put on it, or its cost. There were, also, repairs done to the rigging. There was no new boiler put in her, but there was one under construction. Capt. Kelly told
76 me a few days before he left for Mobile that he had borrowed some money from Mr. Shinn, and had made over his share to Mr. Shinn to secure the payment of the money; he did not tell me that he had sold it, but requested me to look after his interest. In two trips, between New York & Washington, of the "Fairfax," I was told by a clerk at Morgan & Rhinehart's office, a Mr. Wood, I think, that her gross earnings amounted to about $4,000. During the time I had charge of the vessel she was constantly making trips between New York & Washington; we generally tried to make a round trip once in ten days. We always had very good freight.

(Complainant presents to witness, with leave of defendant, sundry vouchers of expenditures made on ac. of the steamer Fairfax, and amounting to $2,061 83, which witness says are correct, and which the defendant admits.

Complainant also presents the accounts of the steamer Fairfax, and Capt. W. H. Winters, and subscribed by him as correct, amount-
77 ing to $2,500 03, the signature to which of witness, with the endorsement as correct, witness recognises, and the correctness of which, as to the account itself, defendant , but does not admit its relevancy as to the question of repairs.)

W. H. WINTERS.

Sworn to and subscribed before me this 1st day of May, A. D. 1869.

M. ASHFORD,
Examiner.

Adjourned until Wednesday, May 5th, A. D. 1869, at 11 o'clock a. m.

M. ASHFORD,
Examiner.

1869. Wednesday, May 5th, 11 o'clock a. m. Met pursuant to adjournment, when the further examination of witnesses was adjouned until Wednesday, the 19th day of May, A. D. 1869.

M. ASHFORD,
Examiner.

1869. Met pursuant to adjournment, when the defendant produced as a witness Captain WILLIAM S. JOHNSON, who, being duly sworn, deposes and says as follows:

In answer to questions by Mr. C. M. Mathews:

78 I served with Capt. Kelly on the steamer "General Gibson," three years ago, in the summer of 1865. I had conversations with Capt. Kelly previous to and after the sale of the steamer "Fairfax;" Capt. Kelly told me a company was about buying the "City of Richmond," as she was called then; and that he (K.) would like, or that they (co.) wanted him to take a part of her, I don't recollect which, if they could buy her reasonable. I think that conversation between us occurred in Washington, and the "Fairfax" was bought within the following 10 days;

He told me that he intended to take part of her if he could raise the money, and that he intended to see Mr. Shinn to raise the money, as he was his most intimate friend. I think he wanted to buy ¼ of her. I had another conversation with him after he left the "General Gibson" and took charge of the "Arlington," bound for Mobile.

(Objection to declarations of Capt. Kelly in regard to the transactions with Mr. Shinn stated in the answer.)

79 He asked me what I thought of the matter; that Mr. Shinn would advance him the money to pay for his ¼ of her.

No cross-examination.

WILLIAM S. JOHNSON.

Sworn to and subscribed before me this 19th day of May, A. D. 1869.

M. ASHFORD,
Examiner.

And thereupon the defendant produces as a witness Mr. C. M. MATHEWS, who, being duly sworn, deposes and says:

On or about the date of the bill of sale filed with the bill in this cause, Capt. Kelly and Mr. Shinn called at my office in Georgetown, (objection to any evidence as to the transaction between Capt. Kelly & Mr. Shinn as incompetent and inadmissable,) and stated the desire of Capt. Kelly to purchase an interest in a steamer, and the willingness of Mr. Shinn to advance the necessary sum of money, then uncertain. Some conversation transpired as to what security should be taken by Mr. Shinn, and it was finally a suggestion of one of the parties,

80 I don't remember which, concluded that a regular bill of sale should be given by Capt. Kelly to Mr. Shinn, of his interest in this vessel. This occur'ed in the forenoon of the day. I prepared the papers, blank as to the amount secured; and I think, on the afternoon of the same day, these gentlemen returned to me with a statement of the amount, and received the papers for execution. A copy of the bill of sale is filed with the bill in this cause, and the letter of attorney of Capt. Kelly is filed with the answer in this cause.

(Objection to this evidence as tending to change the terms of the written agreement.)

I am pretty confident that no promissory note for the amount secured passed through my hands, or that I ever saw any, or am I aware at to any interest or compensation for the use of the money being agreed upon.

CHARLES M. MATHEWS.

Sworn to and subscribed before me this 19th day of May, A. D 1869.

M. ASHFORD, *Examiner.*

Adjourned until Saturday, the 22d day of May, A. D. 1869, at 11 o'clock a. m.

M. ASHFORD, *Examiner.*

81 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Mahlon Ashford, examiner in chancery, do hereby certify that, in pursuance of due notice, the foregoing depositions were taken down, and by me reduced to writing in the presence of and from the statements of the witnesses at the time and place designated in the captain thereof, and were there and there by me read over to the witnesses, and

by them subscribed in my presence and in presence of the parties, solicitors, who then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD,
Examiner in Chancery.

82 *Decree of equity court.—Filed June* 20, 1870.

In the supreme court of the District of Columbia.

DODGE & MCLELLAN
vs.
RILEY A. SHINN. } 1290. Equity doc. 9.

This cause being ready for hearing upon, bill, answer, replication, & proof, was argued by counsel, and the proceedings were read and considered:

Whereupon it is this 20th day of June, A. D. 1870, ordered, adjudged, and decreed that the defendant Riley A. Shinn, is liable to the plaintiffs to contribute one-fourth part of the costs and charges of the repairs of the steamer Fairfax and materials furnished, and that the cause be referred to the auditor to ascertain the amount due to the complainants, as assignees of Morgan & Rhinehart & Co., for repairs, &c., done and furnished to the "Fairfax," and apportion the amount for contribution between the owners of the vessel at the time said work was done and materials furnished, giving credit to each for such payments as may have been made on account thereof.

By the court.

83 *Appeal to general term.—Filed July* 6, 1870.

MCLELLAN & DODGE
vs.
SHINN. } 1290. Equity docket 9.

The defendant appeals from the decree rendered June 20, 1870, against him by Justice Wylie, to the general term.

July 6th, 1870.

MATTHEWS *for Def't.*

Appeal entered and placed on general term calendar, July 6th, 1870.
By the clerk.

Proceedings before the supreme court of the District of Columbia in general term, commencing the 4th Monday, 26th day of September, 1870:

THURSDAY, *November* 3, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Olin and Wylie.

GEORGE FRED. MCLELLAN ET AL.
vs.
RILEY A. SHINN. } 1290. Equity doc. 9.

84 Argued by Mr. Davidge, of counsel for defendant Shinn, and by Mr. Appleby, of counsel for complainants.

FRIDAY, *November* 4, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Olin and Wylie.

MCLELLAN ET AL. *vs.* SHINN ET AL. } 1290. Equity dock. 9.

Argument resumed by Mr. Appleby, continued by Mr. McPherson on the same side, and concluded by Mr. Davidge for def't.

Decree.

MONDAY, *November* 14, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Olin, Humphreys, and MacArthur, justices.

GEORGE FRED. MCLELLAN ET AL. *vs.* RILEY A. SHINN ET AL. } 1290. Eq. doc. 9.

This cause having been heard on a former day of this term, upon the appeal of the defendants from the decree of the equity court of June 20, 1870, and been argued by the counsel of the respective parties, the court thereupon reversed the said decree of the equity court, and orders, adjudges, and decrees that the bill be dismissed with costs.

And from this decree the complainant appeals to the Supreme Court of the United States.

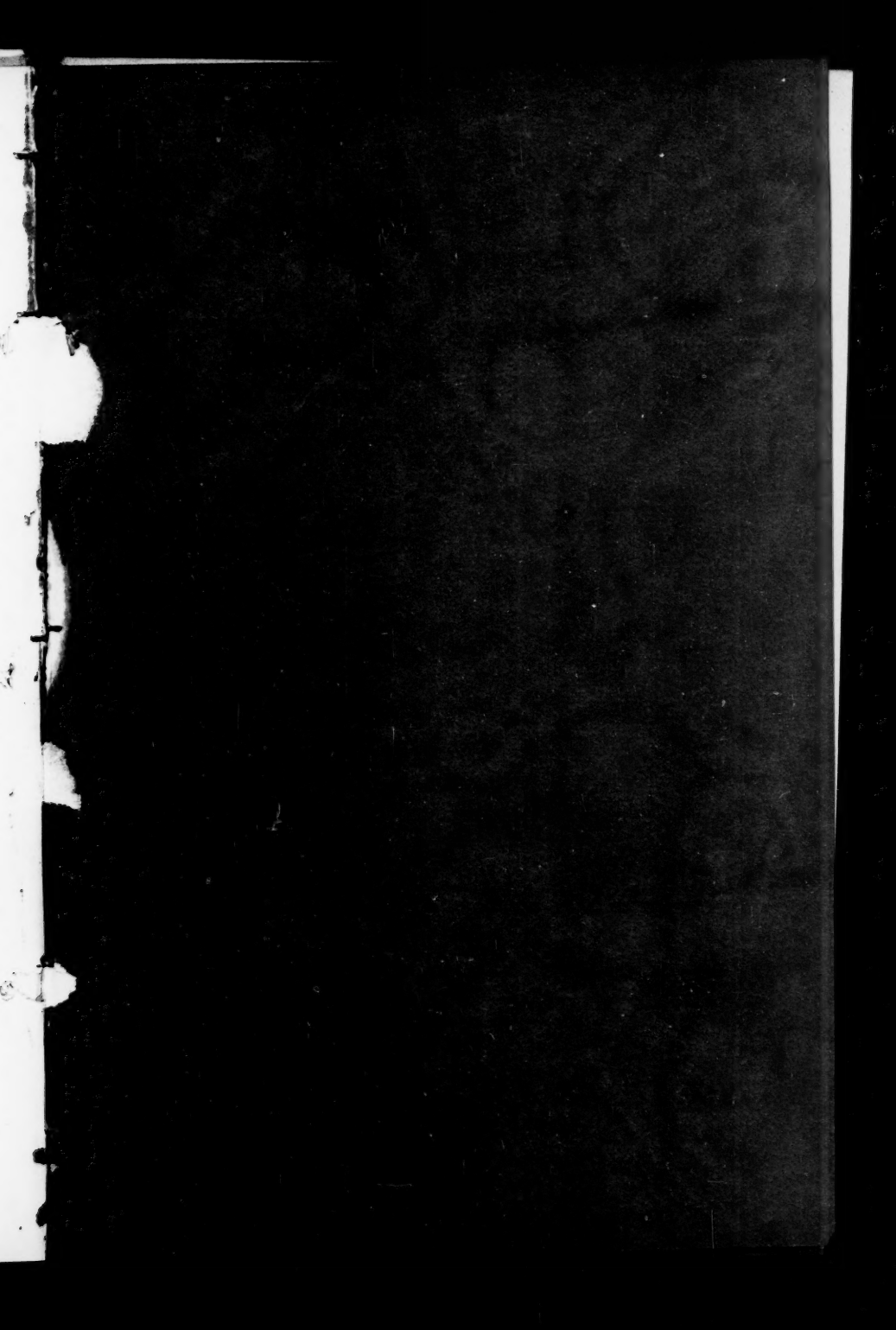
85 *Clerk's certificate.*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals, together, constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Geo. Fred. McLellan et al. vs. Riley A. Shinn et al. 1290. Equity docket 9.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 3d day of January, A. D. 1871.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 472. George Fred. McLellan and Robert P. Dodge, appellants, vs. Riley A. Shinn, Thomas P. Morgan, George Rhinehart, and Erwin G. Comstock. Dist. of Columbia supreme court. Filed 9th January, 1871.



SUPREME COURT OF THE UNITED STATES.

No. 255.

GEORGE F. McLELLAN AND R. P. DODGE, APPELLANTS,

vs.

R. A. SHINN, T. P. MORGAN, ET AL.

ADDITION TO RECORD AND AGREEMENT OF COUNSEL.—FILED 18TH NOVEMBER, 1872.

EXHIBIT T. P. M., No. 1.

[Morgan, Rhinehart & Co., ship-brokers and commission merchants, foot G street, and 241 F st., bet. 13 & 14th.]

WASHINGTON, D. C., *March* 16, 1866.

Capt. KELLY: Your letter, informing me that the Lizzie was all ready, came safe to hand. In regard to paying the bills of repairs on her you must not do it, as the entire matter must be first adjusted by the underwriter's agent at Mobile, Mr. King, and then forward them to me. You can give them any lien on the boat you think proper, so as to secure them and make them easy. The money for the Arlington I am very much in want of. We have had to pay everything on the boat here, as well as all of the repairs and expenses to the Fairfax, for which latter disbursement we are largely out. No one but yourself has paid anything. We had to pay for the boiler-iron, and the work on the new boiler, and great many other things. All of these expenses, of
2 course, make us short of money. I want you to see Mr. King, the insurance agent, and arrange the bills for payment at once.

You can, after the bills are properly authenticated, draw on us, say, at about five days; this will allow me time to get a settlement with the companies in Baltimore. I do hope you will get the salvage case settled this week. Business here is very dull. We hope to hear a good account of your trip to Pensacola and elsewhere.

Yours,

MORGAN.

EXHIBIT T. P. M., No. 2.

WASHINGTON, D. C., *M.* 24, 1866.

DEAR KELLY: I have written Hunter a long letter to-day, and now I intend to drop you a line or two. I presented the bills against the Lizzie yesterday to the underwriters' agents at Baltimore, and such a

fuss as the' kicked up over them. They talk about standing suit and all that sort of thing, and ruled out of the account the wages and
3 victualing of the men on the Lizzie while she was undergoing repairs. I want all the testimony that I can get on this point, showing that the men were actually engaged in saving and repairing the ship. If this can be fully shown I hope to be able to get them to allow the item. I have had nothing from you for some days, and therefore, do not know what you are doing or intend doing. You must keep me fully posted. If the boats leave Mobile Bay you must telegraph me, as I will have to insure them again; they are only allowed, under their present insurance, to run in Mobile Bay. Give me fully your plan.

I received a dispatch from Hunter saying that the Hattie has left for New Orleans, and then got another dispatch that the boats had been seized for taxes. What does this all mean?

I hope that you will propose to settle the salvage claim by accepting 33 per cent. I think they would do this. Try, it anyhow.

I wrote you that if they would not let the Lizzie off without paying her repair bills that you would have to pay them and let her go.
4 I am anxious to get a full statement of the business of the boats; please have everything fully made up and send to me.

I must again appeal to you to remit me all the money you can command. I need it badly. We have had to pay all of the accounts against the Fairfax as well as the other boats, and have had but very small return. They are now at work on the old ship trying to raise her. They had her all afloat the first day they worked on her, but afterwards she grounded alongside the wharf, and at low tide fell over, where she now lies. They (the wreckers) are at work on her again, and hope soon to have her up.

We have received nothing yet on account of insurance, hope to some time this year.

Please try and keep down expenses at a low figure or else we cannot make both ends meet. We are all in usual health.

Yours, truly,

MORGAN.

5 EXHIBIT T. P. M., No. 3.

[Atlantic Steamship Co., between New York, Washington, and Alexandria, Va. Room No. 7, 137 Broadway.]

NEW YORK, *Novem. 7th*, 1865.

Captain JAMES R. KELLY,
Steamer Arlington, Mobile, Alabama:

MY DEAR FRIEND: Yesterday my heart was made glad by the safe arrival of the steamer "Knight" from Mobile; and from the captain I received the gratifying intelligence of your safe arrival and fair prospects at Mobile.

The steamer "Fairfax" is doing wonders, taking everything into consideration. She cleared from here for Washington, first trip, on the 5th of October, and arrived here safely yesterday on her return 3d trip, making the run from Alex. to New York in 48 hours. Her total gross receipts for the three trips amount to $6,200, which I consider pretty fair. She is very economical on coal, having consumed but about 103 tons in the three round trips. Her boiler does very well, but
6 her engine is, or was, very much out of order, but being remidied fast as possible. Her original cost, amounting in all, repairs,

furniture, equipments, &c., stand us in about $12,000; and I consider her worth to-day, at the lowest calculation, $30,000. I have had her insured for $15,000 for one year. Captain Winter is proving himself well worthy his position and our confidence. The "Fairfax" is called the flag-ship of the line. We are now making preparations to organize the co., and we intend putting the Fairfax in at $50,000. Will this meet your approval?

I would like to have you write me as often as your duties will permit, as anything you may have to communicate will interest me. Business is such that it will be impossible for me to go to New Orleans; and Morgan will go in my stead in about ten days.

The "Gibson's" wheel came loose on her last trip to Washington, about 100 miles from Fortress Monroe, and was towed in by the steamer "Clyde." Capt. Young took Johnson, his mate, on board the "Clyde" with him, as witness to any bargain that might be made, and
7 then went into the captain of the "Clyde's" room and shut Johnson out in the cold. You can form your own opinion.

I intend to make a change in the agency here soon as I can find a suitable wharf. Did you order Engineer Middleton to return to Mobile after landing the "Knight" in New York? This is his report; but as he has no written order from you to that effect, I do not hardly credit his story. He was drunk as an owl on the wharf yesterday.

Gibson is well, and so is your friend,

E. G. COMSTOCK.

Exhibit E. G. C., No. 1, to Rhinehart's testimony.

NEW YORK, *March* 8, 1866.

THOMAS P. MORGAN, Esq.,
Washington, D. C.

I forward this day by express the ac. of steamer "Fairfax" in full, showing the net loss to be $19,162.72.

Vouchers for this ac. are in my possession, and can be examined at any time by any of the parties interested.

Riley A. Shinn's ¼ of the net loss amounts to	4,790 68
Less	2,000 00
Bal. due from him	$2,790 68

8 Which, I trust, you will collect immediately and forward me.

Yours, truly, E. G. COMSTOCK,
Per "A."

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing paper-writings, marked Exhibits "T. P. M., No. 1," "T. P. M., No. 2," "T. P. M., No. 3," and Exhibit "E. G. C., No. 1," are truly copied from the originals on file in the clerk's office of said court, in an equity cause, No. 1290, docket 9, between Geo. Fred. McLellan et al. and Riley A. Shinn et al.

Witness my hand and the seal of said court this 14th day of November, 1872.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

Sup. C't U. S. December term, 1871.

McLELLAN & AL.
v.
R. A. SHINN. } No. 255.

We agree that the foregoing exhibits be added to the record in this cause, as if returned in certiorari.

W. D. DAVIDGE,
Sol. for Appellees.
JNO. D. McPHERSON,
Sol. for Appellants.

Supreme Court of the United States.

DECEMBER TERM, 1871.

McLELLAN & DODGE, APPELLANTS,

vs.

RILEY A. SHINN ET AL.

No. 255.

BRIEF FOR APPELLANTS.

This cause comes up by appeal from the Supreme Court of the District of Columbia.

The Case.

The bill was filed by appellants, assignees of Morgan, Rhinehart & Comstock, against their assignors and one Riley A. Shinn, charging that the said assignors and said Shinn were joint owners of a certain vessel called the Fairfax, and that the assignors had, as ship's husband, made advances for the necessary repairs and expenses of the vessel, and seeking contribution from the said Shinn of his part of the said expenses.

The interest of Shinn was alleged in the bill to have been purchased from one Kelly, who had been interested to the extent of a one-fourth part, and had conveyed to Shinn by bill of sale, exhibited with the bill of complaint, (record, pp, 2–3,) and upon the recording of which a new enrolment was made out, on the oath of Morgan, expressing Shinn's interest. (Record, p. 4.)

In his answer Shinn admits the conveyance by Kelly to him, but says it was by way of mortgage only to secure an advance of money, and while *he does not anywhere therein aver distinctly* that Morgan, Rhinehart & Co., had knowledge of the fact, now asserted, that the bill of sale was *by way of mortgage*, he states facts tending to prove that they had such action.

Testimony was taken, and at the hearing at special term a decree was made for contribution, (record. p. 27,) but on appeal to the court in banc, the decree was reversed and the bill dismissed. (Record, p. 28.)

Assignment of Error.

The court erred in dismissing the bill, whether the defendant, Shinn, was part owner or merely mortgagee.

The Evidence.

I.

The defendant was owner and not mortgagee.

1. He took an absolute bill of sale.

His answer, rec., p. 12, folio 37.

His deposition, rec., p. 22, folio 68.

2. He caused it to be recorded.

His deposition, rec., p. 22, folio 68.

3. He joined as part owner in ratifying the act of another part owner who had insured the vessel.

Certificate, rec., p. 15, folio 46.

Admitted by him, rec., p. 23, folios 69, 71.

4. In the transaction between him and Kelly, and in which he says it was agreed that the money he was to pay to Kelly's credit was a loan, no note was given—no agreement made for interest.

Matthews' deposition, rec., p. 26, folio 80.

5. He says the money was charged on his account book,

and has leave to produce that charge, and does not produce it.

His deposition, rec., p. 24, folio 73.

II.

If the defendant was mortgagee—

1. He was a mortgagee in possession. Having derived his interest from a part owner, the possession of the other part owners was his possession.

"Upon the sale of a ship in port, delivery of possession is requisite to make the title perfect. * * * The same rule exists in the case of the mortgage of a ship; *but where a sale is by a part owner* it is similar to the sale of a ship at sea, and actual delivery cannot take place; delivery of the muniments of title will be sufficient, unless the part owner be himself in actual possession." (3 Kent's Com., 132, part 5, sec. 45.)

Kelly was not in actual possession.

2. As mortgagee in possession he was liable.

"The weight of our American decisions has been in favor of the position that a mortgagee of a ship *out of possession* is not liable for repairs or necessaries procured on the order of the master, and not on the particular credit of *the mortgagee who was not in the receipt of the freight*; though the rule is *otherwise when the mortgagee is in possession* and the vessel employed in his service."

3 Kent, 134, part 5, sec. 45, and numerous cases there cited.

1 Parsons' Mar. Law, 112.

Flanders *vs.* Merritt, 3 Barb., 207.

But in truth the sale was absolute.

Kelly had bought a fourth interest in the ship for $2,000, and having become personally liable to pay this sum, he arranged with Shinn to advance the money. He had intended to command this vessel which ran between Washington and New York, but just at this time, being offered

an interest in another ship going south, he changed his plans. (Rhinehart, rec., p. 20.) Hence the adoption at the last moment of an absolute bill of sale, as detailed by Matthews, Mr. Shinn's counsel, who prepared the papers. (Record, p. 26.) Mr. Shinn paid the $2,000, and of course took a receipt in Kelly's name, because Kelly owed that amount for his quarter interest. The $2,000 were paid five days after October 2, (Shinn, rec., p. 22, folio 68,) say October 7. After Kelly's share had thus been paid for, Shinn recorded (October 11) the bill of sale from Kelly to him.

Certificate of record, rec. p. 3, folio 12.
Shinn's deposition, rec., p. 22, folio 68.

If then, as Shinn swears, Morgan gave him an affidavit to enable him to recover the $2,000 from Kelly, it has no bearing on this question. Shinn had actually paid Kelly's debt, and the purchase by him of Kelly's share, thus paid for, did not extinguish Kelly's debt to him, unless there was an agreement to that effect. But if that affidavit by Morgan had contained any evidence in Shinn's favor, it would have been produced. It was, he says, handed to his counsel to enable him to attach Kelly's credits in Morgan & Rhinehart's hands. The attachment suit was brought, and of course the affidavit must have been used and filed on the law side of the same court. Shinn's testimony as to the substance of the affidavit was duly objected to, (record, p. 22, folio 67), and notice was given him to produce the affidavit (record, p. 23, folio 72,), but he neither did so, nor accounted for his failure to do so, and it could have been produced.

There can be no question of the truth of Morgan's testimony that he believed Shinn to have been the owner of Kelly's fourth.

The vessel was bought from the United States by Morgan, Rhinehart, Comstock and Kelly, and must have been so enrolled October 10. The enrollment is not in evidence

but is recited in the subsequent enrollment. (Rec., p. 4, fol. 14.) Then on the 11th, Shinn had his bill of sale recorded, (Rec., p. 3, fol. 12,) and on the 23d, Morgan made the necessary oath as to Shinn's ownership, surrendered the enrolment of October 10, and took out a new one. (Rec., p. 4.) He would not have so sworn had he had not believed Shinn the owner.. And, again, Shinn testifies that Morgan told him his, Morgan's, firm, Morgan, Rhinehart & Co., had $6,000 of Kelly's money in their hands, (Shinn's dep., Rec., p. 13, fol. 41,) and encouraged him to attach it to secure a debt from Kelly to him. There could be no stronger evidence of Morgan, Rhinehart & Co.'s belief that Shinn was owner and Kelly was not, than their failure to apply this money of Kelly's to pay the portion of repairs chargeable to that fourth interest. To hold Kelly's money untouched, is proof that they did not believe him liable, *i. e.*, that he had sold to Shinn.

The power of attorney given by Kelly to Shinn, has no bearing on the case. His failure to avail himself of it to draw from Morgan & Rhinehart money which they admitted they owed Kelly, and which Shinn now claims Kelly owed him, suggests the idea that the power of attorney and the bill of sale were alternatives, and that Shinn had temporarilly the option of either treating the advance of the $2,000 as a loan, and reimbursing himself by drawing the money as attorney, when it should become due to Kelly, or of treating the advance as so much paid on account, and making himself owner by recording his deed; and that after adopting the latter cause it never occurred to him that he could still use the power of attorney for the original purpose. It is otherwise incomprehensible that when "the said Morgan informed said defendant that there was, in the hands of said Morgan, Rhinehart & Co., to the credit of the said Kelly about $6,000, (Shinn's dep., Rec., p. 13, fol. 41,) Shinn should not at once have produced and used his power of attorney, which, as he

now says, was given for the very purpose of enabling him to reimburse himself.

Conclusion.

We submit that the decree should be reversed, and the cause remanded wlth directions to affirm the decree of the sepecial term.

J. M. CARLISLE,
J. D. McPHERSON,
Attorneys for Appellant.

Mayson as a creditor
has protected by the policy
of the U.S. statutes against
the recording of conveyances
& mortgages of chattels.

15-103

Supreme Court of the United States.

DECEMBER TERM, 1872.

GEORGE FREDERICK MCLELLAN and ROBERT P. DODGE, Appellants,

v.

RILEY A. SHINN and others.

No. ~~54.~~ 58

THE CASE.

In September, 1865, Thomas P. Morgan, Erwin G. Comstock, James R. Kelly, and Joseph L. Savage became joint owners, in equal shares, of a steamship called "The City of Richmond," which, on or about the 10th of October, 1865, was re-enrolled, *in their names as joint owners*, at the port of Georgetown, in the District of Columbia, by the name of "The Fairfax."

This vessel was destroyed by fire on the 3d of January, 1866. The shares of Morgan and Comstock were held for the benefit of the firm of Morgan, Rhinehart & Co., composed of the said Morgan and Comstock and of one George Rhinehart.

This firm also acted as agents of the vessel, and made, as alleged, large advances for her repairs and expenses. It subsequently became insolvent, and by two deeds, dated July 6, 1866, and February 13, 1867, the appellants became assignees of its assets. (Record, folios 6, 7, 15, 19.) On the 25th of May, 1868, these assignees filed a bill in the Supreme Court of this District against their assignees, the members of the firm of Morgan, Rhinehart & Co., and Riley A. Shinn, claiming a large amount to be due for the

above advances, and praying an account, and that Shinn be decreed to pay one-fourth of the amount found due.

Joseph L. Savage, owner of one-fourth the vessel, was not made defendant to the suit.

The members of the firm of Morgan, Rhinehart & Co., who had owned one-half the vessel, were served with process, (Record f. 35;) but never answered nor even appeared, and no further proceedings were taken against them.

The claim set up against Shinn is based upon the allegation that, on the 2d of October, 1865, he purchased the one-fourth share in the vessel of James R. Kelly, and took therefor a bill of sale, which was recorded on the 11th of October, 1865, and continued to hold said share until the destruction of the vessel. (Record, f. 3–5.)

The answer of Shinn expressly denies the alleged purchase or any purchase, and claims that he was mortgagee only, and not owner of the share of Kelly, and that Morgan, Rhinehart & Co. were fully cognizant of his relation to the vessel. It says that, on or about the 2d of October, 1865, he loaned to Kelly the sum of $2,000, and as security therefor received the bill of sale; that, at the time of the execution of the bill of sale, both he and Kelly conferred with Morgan, Rhinehart & Co., as agents of the vessel; and that the above amount loaned was by Kelly's order paid over to Thomas P. Morgan, one of said firm, and receipted for by him *as paid for Kelly by defendant;* that said sum was applied on account of repairs on said vessel, and no part of it was paid to Kelly; and that, at the time of the execution of the bill of sale, Kelly, being about to go to the Gulf of Mexico, and having no pecuniary interests in this District other than his one-fourth share in the vessel, left with the defendant a letter of attorney, authorizing him to collect all moneys which might become due, in order that the defendant might reimburse himself the said loan; and that after the transaction Kelly was, in all correspondence and dealings, treated by the firm of Morgan, Rhinehart & Co. as one-fourth owner;

and that subsequently, when the defendant endeavored to collect from Kelly by suit the money loaned Thomas P. Morgan, one of said firm made oath that the firm had never considered the defendant as joint owner of the vessel, but merely as the agent of Kelly. (Record, f. 37–39.)

To this answer a replication was filed. (Record, f. 44, 45.)

The evidence will be found. (Record, f. 48–81.)

The court below dismissed the bill with costs. (Record, f. 84.)

Points.

I. The only equity presented by the bill is, that Shinn was part owner, and as such is legally bound to contribute. This is the whole case, and is denied by the answer and conclusively disproved by the evidence. There is no allegation that he authorized the advances, or that they were made upon his credit, or that he took possession or held himself out as owner, or that Morgan, Rhinehart & Co. had reason to believe, or did in fact believe, him to be such.

II. If the transaction was a mortgage, Shinn is not liable. He never authorized, directly or indirectly, the outlays. It is not pretended there was any express authority, nor that the same can, as matter of fact, be implied, nor that Morgan, Rheinhart & Co. were deceived or misled. It is argued that authority is to be inferred as a legal consequence from the bill of sale and the enrollment in Shinn's name. Authority is, however, always matter of fact. The present case, it will be observed, is between the assignees of some part owners, against an alleged owner. In such a case, authority to bind the latter must be shown.

Story on Partnership, § 421.)

Even where third parties sue owners on contracts of the master of a vessel for repairs and necessaries, the authority of the master must be shown. It is not enough to bind a party, that he holds a bill of sale and is registered as

owner. The bill of sale may be a mortgage, as here, and the registry, even if *prima facie*, is but slight evidence of liability.

Myers *v.* Willis, 17 C. B., 77; S. C., 18 C. B., 886.
Brodie *v.* Howard, 17 C. B., 109.
Hackwood *v.* Lyell 17 C. B., 124.
Collyer on Partnership, § 1235.
3 Kent's Comm., 135, and notes.

One who has taken a bill of sale of a vessel, absolute in terms, but intended only as security for a debt, and has never taken her into his possession or control, or held himself out to the world as an owner, is not liable for supplies or repairs, although the vessel is registered in his name.

Howard *v.* Odell, 1 Allen, 85.

And the fact, that the bill of sale was intended only as security, may be shown by parol, for the purpose of negativing authority to bind.

Id.; Blanchard *v.* Fearing, 4 Allen, 118.

It is contended in the brief of appellants that Shinn was mortgagee in possession. But in fact he never took possession, nor interfered in any manner with the vessel. The possession to bind a mortgagee is not the technical possession referred to; but where the mortgagee exercises the rights of owner, intending to take the risks and reap the benefits.

Myers *v.* Willis, and other cases supra.

The debt of Shinn was $2,000, and deemed well secured, and it seems absurd to suppose that he intended to assume the risks of owner.

III. That Shinn was mortgagee.

To ascertain the character of the bill of sale, a court of equity will look at the intention of the parties contracting, as shown by all the circumstances attending its execution.

An intention to mortgage may be manifested either by a written defeasance, executed simultaneously with the deed, or by the acts and parol declarations of the parties.

Cases above cited.

Morris *v.* Nixon's Ex., 1 How., 126.

Russell *v.* Southard, 12 How., 147.

Babcock *v.* Wyman, 19 How., 299.

Equity will relieve and ascertain the true character of an instrument not only in cases of omission of the defeasance through accident, fraud, or mistake, but also where it was omitted through design, by reason of the mutual confidence subsisting between the parties.

Taylor *v.* Luther, 2 Sumner, 233.

Cited in Babcock *v.* Wyman, 19 How., 299.

Parol evidence is admissible to show that a deed absolute on its face is a mortgage, not only as between parties to the instrument, but also when third parties are interested; if no trust or confidence has been reposed by these third parties upon the strength of the absolute deed, and such third persons have not been misled by the form of the transaction.

Walton *v.* Crowley, 14 Wend., 67.

The absence of the personal obligation of the grantor to repay the money does not make the conveyance less a mortgage, if the relation of debtor and creditor exist.

Rich *v.* Doane, 35 Vermont, 128.

Brown *v.* Dewey, 1 Sandf. Ch. R., 57.

Russell *v.* Southard, 12 How., 152.

Courts of equity grant relief and allow the admission of parol evidence in cases of fraud or mistake.

Sprigg *v.* Bank Mt. Pleasants, 14 Peters, 207.

Applying the above-cited principles to the case at bar, and construing the bill of sale in the light of its surrounding circumstances, it is found that it had its origin in a desire by Kelly to purchase one-fourth part of the steamer

"Fairfax." Witness Johnson (Record, f. 78) says Kelly spoke to him of his intention to buy. Matthews (f. 79. 80) swears that Kelly and Shinn told him Kelly wanted to buy, and Shinn (f. 66) testifies to the same fact. The same witnesses also concur in the statement that Kelly intended to borrow the money from Shinn. Morgan (f. 50) swears to the same intention to borrow from Shinn. The vessel was purchased, Shinn, Kelly and Morgan consulting as to the amount needed to be paid by Shinn for Kelly; Morgan stating that perhaps no money would be needed; if any, however, only $1,000 or $2,000. Kelly afterwards agreed to give Shinn a bill of sale of his share in the vessel as security, the consideration of which was $1,800, and at the same time a power of attorney to collect and receive all moneys due or to become due in the District of Columbia. It is in proof that Kelly had no other interests in this District, except the profits to be paid him from the steamer, and which Shinn was to receive in liquidation of his claim. Kelly left the district, and five days after his departure, Morgan, assignor of the appellees, called on Shinn and asked for and obtained on Kelly's account $2,000, giving a receipt to Riley A. Shinn for "$2,000 *for and in behalf of Captain James Kelly.*" Kelly afterwards declared to Winters, (f. 76,) that he had not sold to Shinn, and asked witness to look after his interest as captain of the vessel. The firm of Morgan, Rhinehart & Co. corresponded with Kelly as to the vessel, (f. 58,) and not with Shinn, until after she was lost, in January, 1866. Shinn never had business regarding her with that firm till after her loss, and never exercised any acts of ownership over her; the "enrollment," wherein he is named as "owner," being issued on the oath of Morgan, and the certificate, (f. 59,) having been signed at the instance of Comstock, one of the firm, for Kelly. Kelly never received any of this money, $2,000, it being paid to Morgan at Kelly's request, and Morgan swears (f. 53) that it was applied to repairs and the original purchase by Kelly of his interest in the vessel. Shinn, after the burn-

ing of the vessel, endeavored to recover the $2,000 advanced by him, by an attachment in the hands of Morgan, Rhinehart & Co.; Morgan, one of the firm, admitting assets; but suit was abandoned upon the failure of that firm.

The omission of a regular defeasance in this transaction was due to the mutual confidence subsisting between Shinn and Kelly; Shinn testifying (f. 74) to an acquaintance of twenty-five years. This confidence is also shown by the fact that Kelly executed the bill of sale and power of attorney, and that they were held by Shinn five days before he advanced the money. The power of attorney was intended to afford Shinn the means of collecting the profits and paying his debt.

The advances by Morgan, Rhinehart & Co. to this vessel were not made, as to Shinn's part, upon the faith of Kelly's bill of sale to Shinn. Some were made before the pretended purchase by Shinn. Their letters show that they regarded Kelly as owner, and only called on Shinn, before the filing of the bill in this cause, as Kelly's agent. Nor was the firm misled by the form of the transaction. Morgan having made an affidavit of the ownership of Kelly.

Although no note was given, the money having been paid after Kelly left the district, the relation of debtor and creditor existed between Kelly and Shinn, and Shinn afterwards attempted to collect the $2,000 advanced by him.

The firm of Morgan, Rhinehart & Co., knowing that the $2,000 paid by Shinn was for Captain Kelly; and before and after the destruction of the vessel recognizing Kelly as owner, until the filing of the bill in this cause, and knowing the transaction between Kelly and Shinn to be a loan, and having received and applied for Kelly and as his agent the $2,000 paid, equity will not countenance their fraudulent attempt to make an instrument, regarded and acted under by them as a mortgage, an absolute bill of sale.

CHARLES M. MATHEWS,
W. D. DAVIDGE,
Solicitors for Appellee.